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The right to food

Report of the High Commissioner for Human Rights

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Introduction

1. On 17 November 1996, the World Food Summit adopted by consensus the Rome Declaration on World Food Security and the World Food Summit Plan of Action, which outline ways to achieve universal food security. Under objective 7.4 (e) of the Plan of Action, Governments, in partnership with all actors of civil society, undertake to "invite the United Nations High Commissioner for Human Rights, in consultation with relevant treaty bodies, and in collaboration with relevant specialized agencies and programmes of the United Nations system and appropriate intergovernmental mechanisms, to define better the rights related to food in article 11 of the International Covenant on Economic, Social and Cultural Rights and to propose ways to implement and realize these rights as a means of achieving the commitments and objectives of the World Food Summit, taking into account the possibility of formulating voluntary guidelines for food security for all". The Commission on Human Rights endorsed this requst in its resolution 1997/8.

2. As a concrete and practical response to objective 7.4 (e), the Office of the High Commissioner for Human Rights convened in December 1997 the Consultation on the Right to Adequate Food (see E/CN.4/1998/21). In resolution 1998/32, the Commission endorsed the proposal made by the Consultation to have a follow-up meeting in 1998 to pursue the discussions on the content and means of implementation of the rights related to adequate food in order to provide the High Commissioner with a full set of recommendations concerning her response to the request of the World Food Summit.

3. That follow-up consultation was convened by OHCHR at the Rome headquarters of the Food and Agriculture Organization of the United Nations (FAO) on 18 and 19 November 1998. FAO co-hosted the event, in which 17 experts and members of non-governmental organizations participated, in addition to 24 representatives of OHCHR, FAO, the World Food Programme (WFP) and the International Fund for Agricultural Development (IFAD). In addition, 39 governmental observers attended the meeting. Mr. Vikracht, Mr. G. Moore, Mr. P. Texier and Mr. A. Eide were elected Chairpersons, respectively, for each session of the meeting. Mr. Eide was also elected as Rapporteur. Two main background papers were presented, by Mr. Eide and Mr. Windfuhr of FIAN International (FoodFirst Information and Action Network).

4. The present report, which provides details concerning the meeting referred to above, is submitted pursuant to paragraph 8 of Commission resolution 1998/32. Sections I and II of the report summarize the presentation of the two main background papers. Section III provides a summary of the discussion and conclusions on the two main items of the agenda of the meeting. Section IV contains the recommendations made by participants of the meeting.

I. REVIEW OF PROGRESS MADE IN THE DEFINITION OF THE RIGHT TO ADEQUATE FOOD IN INTERNATIONAL LAW: STATES' OBLIGATIONS, INTERNATIONAL ORGANIZATIONS' OBLIGATIONS AND THOSE OF THE PRIVATE SECTOR

5. Mr. Eide, former Special Rapporteur on the right to adequate food of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, reviewed the progress made in the definition of the right to adequate food in international law: States' obligations, international organizations' obligations and the role of the private sector. He noted that adequate food could be broken down into several elements. Adequacy of food supply meant that the overall supply should cover overall nutritional needs in terms of quantity (energy) and quality (provide all essential nutrients, including micronutrients such as vitamins and iodine), be safe (free of toxic factors and contaminants) and of good food quality (for example, taste and texture), and the types of foodstuffs commonly available (nationally, in local markets, and eventually at the household level) should be culturally acceptable (fit the prevailing food or dietary culture).

6. As a basis for the definition of the content of the right to adequate food he recommended the text contained in the "International Code of Conduct on the Human Right to Adequate Food", adopted in September 1997 by a number of non-governmental organizations. Article 4, which was built on relevant provisions in the Universal Declaration of Human Rights (art. 25), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (art. 11) and the Convention on the Rights of the Child (art. 24) read as follows:

> "The right to adequate food means that every man, woman and child, alone or in community with others, must have physical and economic access at all times to adequate food or by using a resource base appropriate for its procurement in ways consistent with human dignity. The right to adequate food is a distinct part of the right to an adequate standard of living.
>
> "The realization of the right to adequate food requires:
>
> "1. (a) the availability of food, free from adverse substances and culturally acceptable, in a quantity and quality which will satisfy the nutritional and dietary needs of individuals;
>
> (b) the accessibility of such food in ways that do not interfere with the enjoyment of other human rights and that is sustainable.
>
> "2. The ultimate objective of the right to adequate food is to achieve nutritional well-being. Nutritional well-being is dependent on parallel measures in the field of education, health and care. In this broader sense, the right to adequate food is to be understood as the right to adequate food and nutrition.

"3. The realization of the right to adequate food is inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, both at the national and international level, oriented to the eradication of poverty and the satisfaction of basic needs."

7. To ensure the enjoyment of human rights was an obligation which had to be met by all States. The nature of their obligations, however, needed analysis in order to complete the definition of the right to food. The individual was normally the active subject of the right to an adequate standard of living, in the sense that economic activities to ensure a livelihood started with the efforts made by the individual her/himself. In elaborating the framework regarding the right to food and nutrition, the fundamental principle should be observed that primary responsibility rests with the individual, if adult and able, and provided opportunities did exist. Every adult and able person was responsible for her/himself and for those dependent on that person.

8. The State had the obligation to respect and, when necessary, to create the space necessary for the individual to fulfil this responsibility, to protect that space when it existed or had been created, to facilitate the use of that space and, when required, also to be the provider when other reasonable opportunities did not exist.

9. The international community also had a responsibility, on a subsidiary basis, to encourage and assist States in implementing their obligations and in monitoring them when they did not take the necessary measures within the resources available to them.

10. Thus, the individual was expected, whenever possible through his or her own efforts and by the use of his or her own resources, to find ways to ensure the satisfaction of his or her own needs, individually or in association with others. Use of his or her own resources, however, required that the person had resources that could be used - typically land or other capital, or labour. It could include the shared right to use communal land, and the land rights held by indigenous peoples. Furthermore, the realization of economic, social and cultural rights of an individual will usually take place within the context of a household as the smallest economic unit, although aspects of female and male division of labour and control over the product, as well as various forms of wider kinship arrangements, may present alternative alliances.

11. Finally, Mr. Eide said that stability of the supply and access to food presupposed environmental sustainability, implying that there was judicious public and community management of natural resources, which had a bearing on the food supply, as well as economic and social sustainability in terms of conditions and mechanisms for securing food. Economic and social sustainability involved a just distribution of income and effective markets, together with various kinds of public and informal support and safety nets. These supports could be public social security schemes, as well as numerous forms of community transactions and self-help and solidarity networks, the latter becoming particularly important when people need to cope with various crises.

II. ROLE OF THE INTERNATIONAL ORGANIZATIONS IN THE IMPLEMENTATION OF THE RIGHTS RELATED TO FOOD AND NUTRITION

12. Mr. M. Windfuhr introduced his background paper. He stressed that intergovernmental organizations did have an important role to play to help States in implementing the right to adequate food. However, the principal duty-holder of all human rights was the State, which had to comply with its obligations deriving from the rights contained in human rights conventions. The full implementation of economic, social and cultural rights required a State to comply with its human rights obligations. In particular, it obliged the State to respect, protect and fulfil those rights for all citizens. To fulfil its obligations a State did not necessarily have to be rich or extraordinarily prosperous, but it had to prove - according to article 2 of the ICESCR - that it was using the "maximum of its available resources" for that endeavour. The role of the international organizations started when a State was not able to comply with its obligations, whether or not the reason for the non-compliance was grounded in external shocks (economic, climactic, etc.) or in internal problems caused by political, economic or other developments.

13. He described the five basic roles that international organizations could play in supporting the implementation of the right to adequate food. First, the international organizations could help States which lacked resources and were unable to guarantee the right to adequate food and the right to freedom from hunger for all its citizens, whether temporarily, periodically or for a longer term. The support could be in kind or in cash, as technical or financial support and as advisory services. Second, international organizations could provide legal, political or administrative advice to States which were not complying with their obligations under the right to adequate food, even if they could adopt adequate policies. Third, the international organizations had a role in the active support or promotion of the right to adequate food. Fourth, international organizations had to ensure that their own policies or programmes did not limit States in implementing the right to adequate food. Fifth, international organizations should monitor their own policies and programmes in such a manner that they would not contribute to violations of the right to adequate food.

14. A better implementation of the right to adequate food required a rights-based approach to food and nutrition issues in the activities of international organizations. An explicit rights-based approach would have an important value added to the regular work of the international organizations by focusing on the rights individuals did have vis-à-vis their States. It did allow a better description of the role of States and the definition of criteria for good governance in the areas of economic and social rights. A rights-based approach did require international organizations to orientate their policies with regard to programmes in a way such that they became fully supportive of the requirements of the implementation of the right to adequate food in a double dimension. First, the international organizations should guarantee that the majority of their resources invested in the food and nutrition field were directed towards the requirements mentioned above. Additionally, all programmes and policies should be developed in a way consistent with the standards deriving from the right to adequate food. Second, a rights approach required use of the resources available by

supporting States to fully guarantee the right to adequate food. A rights-based approach also meant developing a dialogue with States that were not complying with their obligations under the right to adequate food. The tasks and activities under a rights-based approach could be summarized by defining the role of international organizations in the implementation of the rights to food and nutrition as respecting, protecting, supporting and promoting these rights in their own policies and programmes and by assisting and promoting States' compliance with their obligations.

15. The role of international organisations in the implementation of the rights related to food and nutrition was described by Mr. Windfuhr as being on two levels: monitoring and means of implementation. Concerning monitoring, the most affected individuals and groups, and especially vulnerable groups, should be identified. The new Food Insecurity and Vulnerability Information and Mapping Systems (FIVIMS) was clearly an important step in this direction. Such monitoring would be more meaningful if it would also register violations occurring with respect to the right to adequate food.

16. He suggested that the information gathered by the various international agencies, such as UNICEF and the World Health Organization, should be brought to the attention of the respective treaty bodies in the human rights system, inter alia the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the Human Rights Committee and others. He also argued that United Nations specialized agencies, Programmes and Funds as well as the international financial institutions and the World Trade Organization should, within their mandates, assess the impact of their activities in member States on the realization of the right to adequate food and take corrective measures as required.

17. Concerning means of implementation, he said that the implementation of the right to adequate food required steps to be taken by all appropriate means, in particular the adoption of legislative measures, supported by the necessary administrative capacity. While international organizations were already taking various measures to promote food security at different levels, very few measures were designed explicitly to support the implementation of the rights to food and nutrition.

18. Finally, he mentioned five additional responsibilities for international organizations. First, they must never put pressure on a State or other international organizations to violate the human right to adequate food. International organizations should be accountable. Second, they should ensure that nothing in international treaties establishing international organizations or regarding other international matters, such as international finance and trade, overrode the obligations of international organizations regarding the right to adequate food. Third, better coordination and coherence between the different programmes and policies promoted by each international organization should be created. Fourth, a complaint procedure should be established. Victims of violations of the right to adequate food and other economic, social and cultural rights still had few possibilities to challenge international organizations in case they had a co-responsibility. Fifth, the "rights approach" should be actively promoted. This included

regular documentation of violations of the right to adequate food, support to the respective monitoring bodies of the United Nations human rights system, support for new international legal instruments to strengthen the rights to food and nutrition, and publications on the issue.

III. SUMMARY OF DISCUSSION AND CONCLUSIONS OF THE CONSULTATION

19. The participants endorsed the conclusions and recommendations of the previous consultation (E/CN.4/1998/21, paras. 25-37).

20. They underlined the necessity of approaching all aspects of development, including issues related to food and nutrition, from a human rights perspective. They expressed their satisfaction with the position taken by the Secretary-General that human rights should be integrated in all endeavours of the United Nations, and noted the precedent set by UNICEF in taking the rights of the child as the basis of its work. Satisfaction was also expressed with the January 1998 policy paper by the United Nations Development Programme on human rights and development.

21. They noted that a human rights approach to development required that human rights be treated as interdependent and indivisible, with all human rights coming into play. The human rights approach built on a normative, legal basis. Human rights were obligatory for States. International human rights should be matched with a corresponding legal basis within States; consequently, appropriate legislative and other measures should be adopted.

22. The participants considered that the realization of the right to food had to take place mainly at the country level, and recalled the provision of article 2 of the ICESCR regarding implementation at the national level through legislative action. Incorporating the right to food into framework legislation was essential to establish real accountability of the "duty bearer" towards the "claim holders".

23. Human rights required active and effective remedies, though not necessarily by the use of courts. Human rights implied accountability, both domestic and international. The implementation of human rights was subject at the international level to monitoring through a reporting process and a dialogue conducted by the treaty bodies.

24. The international community and, thereby, all States had an obligation to cooperate with a view to creating the conditions under which human rights could be realized worldwide. States had obligations not only in regard to their own inhabitants, but also, under the Charter of the United Nations, to cooperate in solving problems of a social and humanitarian nature. In time of emergencies States had at least a moral obligation to share the burdens of food aid and other measures of relief. The implementation of the right to food and nutrition therefore formed part of the wider task of implementing the right to development.

25. The participants took note of the "International Code of Conduct on the Human Right to Adequate Food" adopted in September 1997 by three non-governmental organizations. There was broad support for the definition contained in article 4 of the Code of Conduct. Three sets of additional

suggestions were made. First, it was proposed to emphasize the right to food preference, taking into account the cultural diversity of food habits. Second, it was proposed to add references to the right to receive assistance and States' obligation to provide assistance in emergency situations (conflicts and natural and/or man-made disasters). The latter comprised the right to receive food aid in times of critical need, and the States's obligation to grant access to impartial humanitarian organizations to provide food aid and other humanitarian assistance. And third, it was proposed to add a reference to the elimination of gender inequality and other discrimination and the prohibition of the use of the denial of access to food as part of a military strategy.

26. The participants agreed that in general terms the definition in article 4 should serve as a basis for future work, but that the modifications mentioned above should be taken into account in finalizing the definition. They felt that while some additional elements could still be included, the task of clarifying the content of the right to food could now soon be completed, drawing, inter alia, on the formulations of the Code of Conduct.

27. The participants renewed the call for the adoption by the Committee on Economic and Social Rights of a general comment on the right to food. They noted with satisfaction the draft circulated by Mr. Texier during the meeting, but noted that it might be strengthened in two respects: by being more explicit regarding the gender perspective and by drawing also on humanitarian law in armed conflict.

28. The primary responsibility for the realization of the right to food and nutrition rested on the State. Article 2 (3) of the Declaration on the Right to Development made it clear that States had not only the right but also the duty to formulate appropriate national development policies that aimed at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom. The participants underlined that such plans or strategies must give particular attention to the rights to food and nutrition. One aspect of the strategy should be to adopt a general framework legislation on the right to food and nutrition, and to review all sectoral laws to check their compatibility with the framework law.

29. Accountability, transparency and an effective remedy should be the focus of the implementation process related to the right to food both at the national and the international level.

30. International cooperation and assistance would probably be necessary in the beginning, as well as evaluation and input from treaty bodies. Since there was as of yet little documented practical experience with incorporating the right to food into national legislation, the content of such legislation could not at this stage be generalized. However, as such experience was gained, it would surely help the global understanding about the content and implementation methods of the right to food. Moreover, the rights-based approach could be utilized for the actual initial process within a country

towards such legislation, which, in turn, would incorporate the principles of democracy, participation, empowerment, transparency, targets, monitoring and accountability, and other elements inherent in the rights approach.

31. Several treaty bodies were involved in monitoring the implementation of rights related to food and nutrition. This included not only the Committee on Economic, Social and Cultural Rights, but also the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women and the Committee on the Elimination of Racial Discrimination. Participants agreed that there should be improved contact between these bodies, sharing information and working together towards common guidelines where their mandates intersected. Thematic working groups focusing on particular rights, in this case the rights to food and nutrition, should be set up to improve the efficiency of their work.

32. All international agencies were encouraged to adopt a rights approach to their mandates, taking into account also the Declaration on the Right to Development. There should be closer collaboration between the agencies and the treaty bodies, sharing information and developing joint indicators or benchmarks.

33. A primary task of agencies was to help States, in particular those who had limited resources and therefore were unable to guarantee the right to food to all of their inhabitants. Assistance could be both material and in terms of advisory services. However, all States, including those with meagre resources, should allocate the maximum of their available resources to ensure, as far as possible, the rights to food and nutrition for their inhabitants.

34. International agencies should also support and promote the rights-based approach to development, encouraging States to redirect their efforts in ways which would optimize, in a sustainable way, the satisfaction of basic needs. Agencies could give legal, political and administrative advice to States to make them better able to meet their obligations regarding the rights to food and nutrition. They could, in particular, help States in monitoring the implementation of and breaches of their obligations related to the right to adequate food.

35. Agencies should make every effort to ensure that their policies or programmes did not have a negative effect on the implementation by States of the rights to food and nutrition.

36. The United Nations Development Assistance Framework (UNDAF) was seen as an important mechanism for providing the organizations with the opportunity to work together at the national level in order to reach the goals of the global conferences, including the goals related to hunger, women, etc., to identify key actions, and to pool resources for this purpose.

37. The participants noted that the processes of globalization sometimes had negative consequences for the enjoyment by vulnerable groups of the rights to food and nutrition. Globalization had particularly negative consequences for women and often, also, for children. The participants shared the view expressed by the Committee on Economic, Social and Cultural Rights in its Statement on Globalization and Economic, Social and Cultural Rights adopted on

11 May 1998, in which the Committee had argued that while much energy and many resources had been expended by Governments on promoting the trends and policies that were associated with globalization, insufficient efforts were being made to devise new or complementary approaches which could enhance the compatibility of those trends and policies with full respect for economic, social and cultural rights. Competitiveness, efficiency and economic rationalism must not be permitted to become the primary or exclusive criteria against which governmental and intergovernmental policies were evaluated. Finally, it was suggested that globalization should not be used as an excuse by Governments to delay the implementation of economic, social and cultural rights in general and the right to adequate food in particular.

IV. RECOMMENDATIONS

38. The participants made the following recommendations.

Definition

39. The High Commissioner for Human Rights should continue to take the leadership role in advancing the definition of the right to food and nutrition as a human right and to develop a comprehensive strategy for this purpose. Elements of such a strategy would include dialogue with States supplemented by advisory services and other forms of assistance. Partners in the elaboration and implementation of the strategy should include both the legal and the political human rights bodies, as well as the specialized agencies and other bodies, including NGOs.

40. Efforts to clarify the right to food should be brought to completion in the near future. The participants recommended that the text of article 4 of the "International Code of Conduct on the Human Right to Adequate Food" be used as a basis for clarification (see para. 6 above).

41. In the further elaboration of a definition of the rights to food and nutrition, reference to the right to food in emergency situations should be taken into account. This included the right to receive food aid in times of critical need, and the obligation of States to grant access to impartial humanitarian organizations to provide food aid and other humanitarian assistance, as established in international humanitarian law. Reference should also be made to the elimination of gender inequality and the specific needs of children, as well as the prohibition of starvation as a method of warfare. This applied also when sanctions were adopted and targeted against a country: there must always be adequate exceptions ensuring the access to necessary food at all times. Humanitarian law must also be taken into account, by recognizing that States had the obligation to respect the access to food and under no circumstances to deprive people of their access to food be it by forced evictions, by destroying food crops or destroying production resources.

42. The Committee on Economic, Social and Cultural Rights, as a contribution to the clarification, should urgently adopt a general comment on the right to food, taking into account the gender perspective and other issues raised

during the consultation. It was further recommended that the Committee review its guidelines for reporting in line with its general comment on the right to food.

Cooperation

43. Human rights treaty bodies should explore ways and means to establish cooperative links among themselves and with specialized agencies. In this perspective, working relationships should be institutionalized between the Committee and the Sub-Committee on Nutrition of the Administrative Committee on Coordination with a view to ensuring the flow of information between the two bodies.

Indicators

44. Efforts should be made to better develop indicators and benchmarks concerning the achievements and shortcomings in the realization of food and nutrition rights. The consultation noted with satisfaction the steps taken to elaborate the Food Insecurity and Vulnerability Information and Mapping System (FIVIMS), which was likely to be of great usefulness. A workshop on indicators drawing together experts from the specialized agencies and the treaty bodies, should be organized.

45. The consultation recommended that States should consider the adoption of a framework law, to be a part of a national strategy. The framework law should include provisions on its purpose; the targets or goals to be achieved and the time-frame to be set for the achievement of those targets; the means by which the purpose could be achieved described in broad terms, in particular the intended collaboration with civil society and the private sector and with international organizations; institutional responsibility for the process; and the national mechanisms for its monitoring.

46. FAO should offer its assistance, upon request, in drafting the framework legislation and in reviewing the sectoral legislation, taking into consideration FAO's considerable expertise and accumulated knowledge concerning legislation in the fields of food and agriculture.

47. The consultation further recommended that FAO, WFP and IFAD in conjunction with human rights experts, should explore how to cooperate more effectively on the implementation of the right to food at the national level, with due respect to their individual mandates and building on their respective expertise. FAO could provide legal, nutrition, monitoring and technical expertise; WFP its experience in targeted feeding programmes; and IFAD its experience in dealing with poverty issues and investment programmes/lending operations.

48. The United Nations Development Assistance Framework (UNDAF) constituted an important tool for strengthening inter-agency cooperation at the country level. Coordinated efforts should be maintained to enhance coherence and interaction between all actors concerned, including the various components of civil society, for the achievement of sustainable human development.

49. The consultation further recommended that a study be undertaken to clarify the joint and separate responsibility of States, in accordance with the Charter of the United Nations, to cooperate in assistance in times of emergency.

50. The consultation also recommended that agencies should establish and make use of an internal mechanism to ensure that their own policies and programmes did not have a negative effect on the implementation by States of the rights to food and nutrition.

Training

51. Recognizing the importance of training for organizations adopting a rights-based approach, efforts to develop training materials on human rights, particularly those related to food and nutrition, should be supported. The High Commissioner's initiative concerning the preparation of human rights training material for United Nations system-wide use was therefore welcomed. It was, however, emphasized that training materials might need to be tailored to incorporate issues of particular concern to the individual food agencies.

52. Non-governmental organizations should devote more attention to economic and social rights, including the rights to food and nutrition. A link should be established between those NGOs which focused their interest on the activities of the food organizations in Rome (most of whom were development organizations) and those which focused on the activities of the human rights bodies and other agencies in Geneva (most of whom were human rights organizations). Generally, there should be more interaction between human rights and development organizations.

Impact of globalization

53. Participants recommended the initiation of a study on the impact of globalization on the food and nutrition situation of vulnerable groups and on remedies which could be adopted in order to reverse such impact.

Seminar with financial institutions

54. The consultation strongly supported the recommendation, already made by the Committee on Economic, Social and Cultural Rights and the meeting of the chairpersons of the human rights treaty bodies, to organize a seminar with international financial and trade institutions, to enhance dialogue and encourage consultations on a regular basis and to prevent activities which would cause a further deterioration in the enjoyment of economic, social and cultural rights.